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Water Docket
Environmental Protection Agency
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NW.
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Dear EPA Administrators,

The Department of Agriculture and Markets has completed its review of the U.S. Environmental Protection Agency's draft Chesapeake Bay Total Maximum Daily Load (TMDL), and subsequent information related to this document. I feel compelled to vocalize the Department's ongoing concern with the lack of parity amongst states in the Bay Watershed, lack of credit for New York's aggressive performance reducing pollution and EPA's lack of understanding about New York State agriculture and stewardship program, which has been acknowledged by EPA's staff after release of the draft TMDL.

Given our geographic location in the Chesapeake Bay Watershed, land-use, and performance to date, EPA's draft allocations for New York State raise several questions about parity among the Bay states under the presented TMDL. The 16 counties, 16 Soil and Water Conservation Districts, over 2000 family farms, and 629,000 residents living and working in New York's portion of the Bay Watershed have made great strides to reduce nitrogen (N), phosphorus (P) and sediment loads to the Chesapeake Bay. The vast majority of other Bay states have experienced significant increases of people and livestock, land-use stress and intensification, accompanied by increased N and P loads over the last 25 years. New York's sixteen counties have had the reverse experience on all these fronts. In 1985, New York's baseline "no action" loads were 13.47 million lbs. N and 1.05 million lbs. P. Today, the same baseline "no action" loads are 11.03 million lbs. N and 0.97 lbs. P. New York State should be credited with the load reductions we have

achieved since 1985. These are the product of progressive state and local conservation efforts and, unfortunately, of economic stress in the region.

EPA disregard of New York's documented reductions and the ratcheting down of allocations for New York, so as to alleviate the need for increased actions by other states, while maintaining the overall TMDL goal is inequitable. This imposes unrealistic costs on the businesses, governments, and people of New York State. The reductions EPA is asking of New York are more complex to implement and expensive due to decreasing returns at the margins. The EPA draft TMDL allocation for New York is unrealistic.

- New York State is held to deliver an equivalent percentage reduction for N (~22%) and by far the highest percentage reduction in P (35%) of all the Bay states.

We understand that even if other Bay states could reduce their loads to the draft EPA allocations by 2025, the water leaving their jurisdictions would still deliver higher nutrient loads per acre than New York's current 2010 load/ acre.

- As the state that has the lowest present delivered loads, (2.65 lbs N/acre/year and 0.20 lbs P/acre/year) New York State is required to accomplish relatively more than the other states with two to three times our current loading rate.

If all states were to achieve the modest loads currently leaving New York State, the Chesapeake Bay would meet water quality standards eliminating the need for a TMDL.

- EPA proposes to allow those other states to continue to deliver two to three times New York State's draft allocation (2.07 lbs N/acre/year and 0.13 lbs P/acre/year) in its 2025 TMDL goals.

We are deeply concerned about the economic consequences and implications to New York agriculture industry's ability to remain competitive with the draft TMDL's overly aggressive pollution targets. While we recognize that other states have varying magnitudes of delivered N and P to reduce, these other states also have diverse land use types allowing them to draw reductions from a wide range of sources. New York's is a small portion of the watershed's land base, largely forest (76%) with some agriculture (21%) and urban development (3%). Under these land use dynamics load reductions must come from agriculture in New York. It is understood that all Bay States have a shared responsibility to achieve water quality standards. However, other states with higher loading thresholds, across all land uses, places an undue burden on New York farm families. As discussed in some of our previous memos this condition is best demonstrated by the fact that even the total elimination of the dairy industry in our portion of the Chesapeake Bay Watershed would <u>still</u> not allow New York to meet the proposed TMDL. When such a draconian measure is still inadequate, we are facing the worst kind of policy suggestion. There must be parity in the delivered load allocation amongst states in the Chesapeake Bay TMDL.

Through the New York State Agricultural Environmental Management (AEM) program conservation partnership (Soil and Water Conservation Districts, USDA-NRCS, NYS DEC, Cornell Cooperative Extension, and the Department) New York has the track record, vision, and people on-the-ground to achieve improved water quality for the Chesapeake Bay. New York has, and will continue to advance many important elements of a successful Bay strategy. It is important for EPA to understand how and why agricultural stewardship works in New York. Unlike many other states the fundamental resource elements that define our agricultural landscape are unique.

- All but a few New York livestock farms rely heavily on homegrown forages and because of this they tend to have a larger land base and a much lower stocking density (0.43 Animal Units/Acre) relative to other portions of the Watershed. This is supported by recent nitrogen and phosphorus balance studies for the New York portion of the Watershed that show that agricultural land is actually short of nitrogen and roughly in balance for phosphorus relative to crop demand. (1) It is in stark contrast to other portions of the Bay Watershed where nitrogen in manure and phosphorus in soil and manure are at high enough levels beyond crop need that losses to the environment are inevitable and great. To add to the problem, other Bay states have Phosphorus Indices and nutrient guidelines that allow excessive nitrogen and phosphorus applications on these fields. New York's more conservative Phosphorus Index and nutrient guidelines have eliminated phosphorus additions and minimized nitrogen applications in such conditions ten years ago.

- The amount of phosphorus fertilizer used on farms statewide has decreased from 35.1 million pounds in 1997 to 23.2 million pounds in 2006. (1) The cropland P balance for the New York portion of the Watershed was 1.5 lbs P/acre as last determined in 2006. New York farms are advancing phosphorus and nitrogen conservation management strategies at an aggressive pace absent addition regulation.

- Almost half of all the dairy cows in the New York portion of the Chesapeake Bay Watershed are CAFO permitted and nearly 100% of the remaining livestock are participating in New York's voluntary AEM program. These programs both have formal quality assurance elements and rely on verification procedures.

Farmers and the State of New York are committed to advancing the watershed goals and resulting improvements to the Chesapeake Bay. In the last decade, New York State has provided ~$25 million dollars toward the implementation of Best Management Practices to improve water quality in the Chesapeake Bay Watershed. The current New York State Agricultural Environmental Management (AEM) and USDA-NRCS cost-share programs are estimated to eclipse all previous totals delivering ~$ 125 million in conservation funding over the next 15 years. We hope that the EPA will enhance its understanding by backing these efforts and incorporating New York agriculture into its modeling efforts.

The Department has also worked very closely with the NYS Department of Environmental Conservation (DEC) to coalesce several detailed comments related to the proposed TMDL for the Chesapeake Bay as it pertains to Agriculture. These comments will arrive under separate cover from DEC, but at this time I want to convey my complete agreement and support of the outlined concerns.

New York's AEM Program has received many accolades over the years for being adaptable and superlative at protecting the environment, while advancing the viability of agriculture. EPA has demonstrated its ability in the past to be a valuable and insightful federal partner toward the enhancement of our natural resources through funding, technical assistance, and an overarching federal regulatory framework. Environmental progress has been achieved in New York under an umbrella of cooperation, collaboration and partnership. We urge your cooperation in addressing the presented concerns on the TMDL for the Chesapeake Bay.

Sincerely,

Patrick Hooker

Patrick Hooker
Commissioner

(1) "NY Phosphorus Index may not be perfect, but has served state well" Chesapeake Bay Journal, November 2010 http://www.bayjournal.com/article.cfm?article=3973